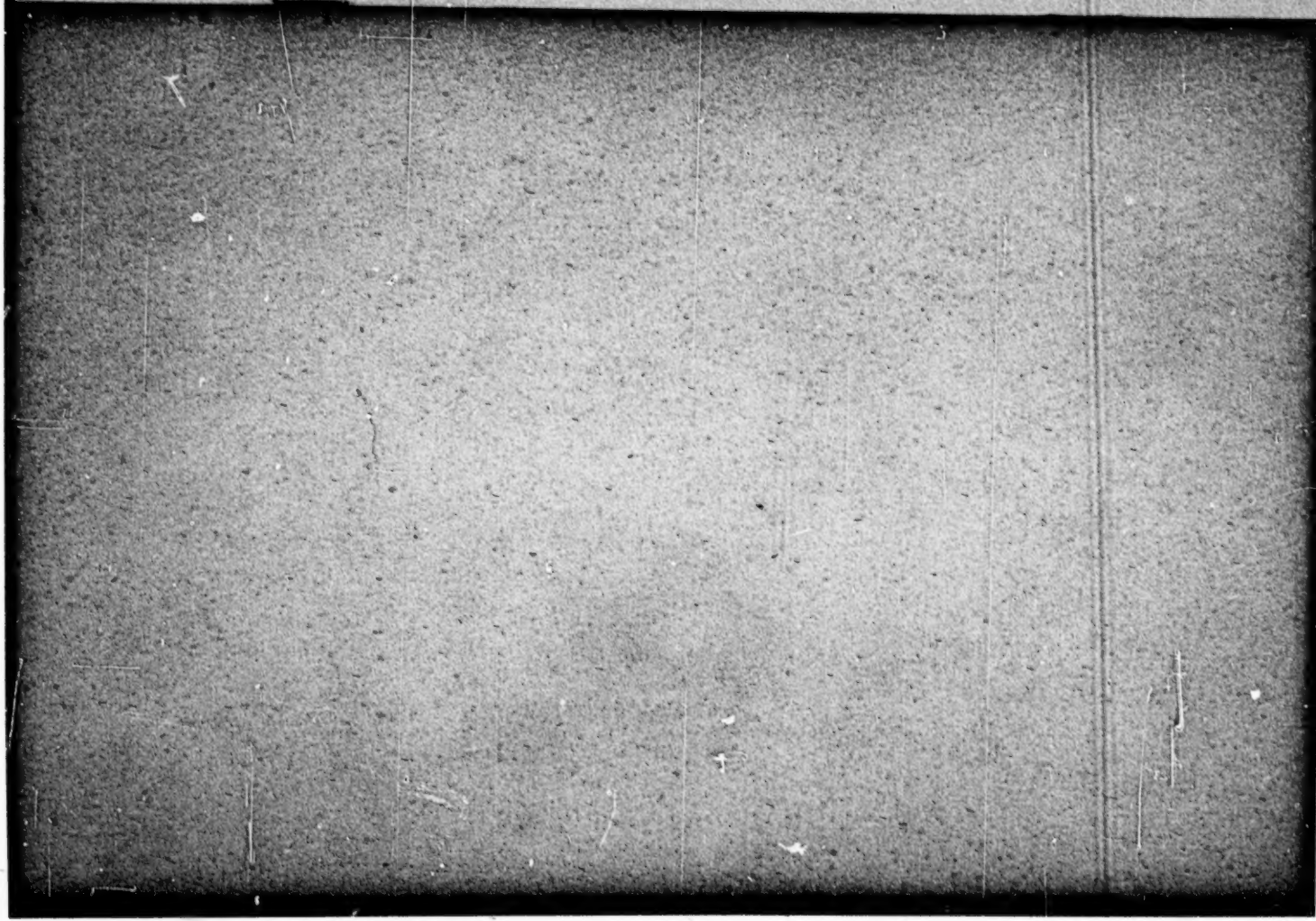

SUPREME COURT, U. S.

No. 74-68

FILED
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MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1974

CLARION CORPORATION,

Petitioner,

vs.

AMERICAN HOME PRODUCTS CORPORATION, LEHMAN BROTHERS and RICHARD F. WATT, et al.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

MEMORANDUM OF RESPONDENTS AMERICAN HOME PRODUCTS CORPORATION AND LEHMAN BROTHERS IN OPPOSITION

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BORG/CHICAGO U.S.A.

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This controversy stems from a diversity case in which plaintiff-petitioner claimed the contractual right to a finder's fee of $980,000. On the eve of trial, the parties agreed to a settlement by which petitioner was to receive fourteen annual payments of $35,000 each — a total

of $490,000 over a fourteen year period. The case thereupon was dismissed with leave to reinstate, pending drafting of settlement papers. Thereafter, on February 8, 1971, the case was reinstated and dismissed with prejudice, plaintiff having advised the Court both orally and in writing (through plaintiff's president and sole stockholder, Mr. Paul Klein) that plaintiff stood ready to execute the settlement papers which then had been drafted.*

Thus the case was dismissed as settled on February 8, 1971. No appeal was taken from that order of dismissal.

All of the subsequent proceedings have revolved around the quarrel between petitioner and its former counsel over attorney's fees (now amounting to the $20,486.21 presently in controversy), except that on January 29, 1973, long after the passage of any conceivably proper time for reconsideration of the order of dismissal, petitioner requested, *inter alia,* "That the [District] Court vacate its order of February 8, 1971 dismissing the underlying suit against American Home Products and Lehman Brothers." (Petition, p. 1, filed with District Court January 29, 1973.) On

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* Memorandum filed by Mr. Klein with the District Judge on February 8, 1971: "If there is nothing new before the court to change its position * * *, I stand ready * * * to go ahead with Mr. Burnham [counsel for American Home] in closing the settlement agreement." (Memorandum, p. 6.)

Oral statement of Mr. Klein in open court on February 8, 1971: "I am prepared to comply with the motion [to reinstate and to dismiss with prejudice] and execute the documents." (Transcript, p. 5.)

Again, Mr. Klein speaking to the Court the same day: "Sir, I am prepared to close the documents, as I advised Mr. Watt [plaintiff's attorney] prior to the instituting of these proceedings." (Transcript, p. 6.)

The District Judge thereupon signed the order reinstating the case and dismissing it with prejudice.

March 1, 1973 the District Court denied that request,* finding ". . . no basis in fact or law" for vacation of the dismissal order. The Court of Appeals affirmed, stating:

> "Klein [petitioner's president] has filed a great volume of documents in the district court and here. He has had ample time to ponder what his fancied grievances may be. Aside from generally alleging a conspiracy among the trial judge, all of Clarion's and his former attorneys, and most of the local bar (for failing to represent him in one case *where the time to appeal has long since passed* [No. 73-1418] and another case where appeal was taken and lost [No. 73-1419], he has developed nothing to allege any of the elements to show that the settlement was procured by fraud." (App., p. 10, emphasis supplied.)**

The Court went on to note that even a motion to vacate for fraud was untimely (App., p. 10, fn. 6), and then pointed out that Klein

> ". . . should have understood that the refusal of many attorneys to represent him was not a conspiracy but instead a recognition of the frivolity of his position." (App., p. 12.)

With respect to the contention that the District Court and various members of the bar had not treated petitioner fairly, the Court of Appeals' opinion shows that that court reviewed the record carefully and found the claim baseless:

> "We have already in our previous opinion dealt with Klein's unpersuasive complaint that Clarion's case had somehow not been properly handled, 464 F. 2d 444, 445-46. Nevertheless, we have carefully read through all of Klein's writings to attempt to fathom

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* The order bears the typewritten date of February 5, 1973, but bears the stamped date of March 1, 1973 above the District Judge's signature.

** Citations to the Court of Appeals opinion are to pages of the appendix printed with petitioner's brief.

his grievances and we have also gone through the entire record in this case to try to determine whether anything he has said has any basis in fact or whether something appears in the record which he has not alluded to but which bears the slightest trace of unfairness to or overreaching of Clarion or Klein. We find nothing of that nature.

"The case was diligently and competently handled by all of Clarion's and Klein's former counsel. In view of the voluntary settlement, the trial judge had no opportunity to display any prejudice against Clarion or Klein. The settlement is unquestionably an excellent and remunerative one." (App., pp. 10-11.)

Thus neither the original case, nor the issues pertaining to the settlement (or the attempts to reopen the settlement), nor petitioner's scandalous attacks upon its various attorneys and upon judges in the courts below present any issue warranting review by this Court. The Court of Appeals was fully justified in finding, as it did, that: "Klein's [petitioner's] course of action since the dismissal of the case on February 8, 1971 * * * has been frivolous and obstructive and has caused a shameful waste of judicial manpower." (App. p. 11.)

Since the case clearly presents no question worthy of review, the petition for certiorari should be denied.

Respectfully submitted,

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